

Rule 27. Stays pending appeal.

(a)(1) A sentence of death shall be stayed if an appeal or a petition for other relief is pending.

(a)(2) A sentence of fine, imprisonment, or probation shall be stayed if an appeal is taken and a certificate of probable cause is issued.

(a)(3) When an appeal is taken by the state, a stay of any order of judgment in favor of the defendant may be granted by the court upon good cause pending disposition of the appeal.

(b) A person who has been found guilty of an offense and sentenced to a term of incarceration in jail or prison, and who has filed a notice of appeal, shall be detained, unless the trial judge issues a certificate of probable cause and determines by clear and convincing evidence that the defendant is not likely to flee during pendency of the appeal and that the defendant will not pose a danger to the safety of any other person or the community if released under any of the conditions set forth in paragraph (g).

(c) If the trial court denies the defendant a certificate of probable cause, or finds that the defendant is likely to flee or poses a danger to the safety of any other person or the community and denies release, the decision may be appealed to the court ~~in~~ to which the notice of appeal of the conviction has been ~~filed~~ transmitted.

(d)(1) No certificate of probable cause shall issue except upon application of the defendant filed with the appropriate court.

(d)(2) The application for a certificate of probable cause shall be in writing and accompanied by a memorandum of law identifying the issues to be presented on appeal and supporting the defendant's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison.

(d)(3) If release is denied, any appeal shall be accompanied by an affidavit made and signed by counsel for the defendant, or by the defendant if the defendant is not represented by counsel. The affidavit shall contain the following:

(d)(3)(A) A narration of the relevant facts developed at trial;

(d)(3)(B) A statement of the crime(s) of which the defendant was convicted;

(d)(3)(C) A statement setting out the sentence imposed; and

(d)(3)(D) A statement that the defendant has previously applied for a certificate of probable cause, setting forth the issues that were presented to the court, the court's ruling and the reasons given in support of the ruling.

(e) When filed in the trial court, a copy of the application for a certificate of probable cause and supporting memorandum shall be served on the prosecuting attorney. When filed in the appellate court, a copy of the application and supporting memorandum shall be served on the Utah Attorney General if the case involved any felony charge, and on the prosecuting attorney if the case involved only misdemeanor charges. An opposing memorandum may be filed within 10 days after receipt of the application. A hearing on the application shall be held within 10 days after the appropriate court receives the the opposing memorandum, or if no opposing memorandum is filed, within 15 days after the application is filed with the court.

(f) No certificate of probable cause shall issue and the defendant shall be detained unless the appropriate court finds that the appeal:

(f)(1) is not being taken for the purpose of delay; and

(f)(2) raises substantial issues of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison.

(g) If the court determines that the defendant may be released pending appeal, it may release the defendant on the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community, which conditions may include, without limitation, that the defendant:

(g)(1) is admitted to appropriate bail;

(g)(2) not commit a federal, state or local crime during the period of release;

(g)(3) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court

that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(g)(4) maintain employment, or if unemployed, actively seek employment;

(g)(5) maintain or commence an educational program;

(g)(6) abide by specified restrictions on personal associations, place of abode or travel;

(g)(7) avoid all contact with the victim or victims of the crime(s), any witness or witnesses who testified against the defendant and any potential witnesses who might testify concerning the offenses if the appeal results in a reversal or an order for a new trial;

(g)(8) report on a regular basis to a designated law enforcement agency, pretrial services agency or other agency;

(g)(9) comply with a specified curfew;

(g)(10) refrain from possessing a firearm, destructive device or other dangerous weapon;

(g)(11) refrain from possessing or using alcohol, or any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner;

(g)(12) undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol abuse or dependency;

(g)(13) execute an agreement to forfeit, upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the defendant as required, and post with the court such indicia of ownership of the property or such percentage of the money as the court may specify;

(g)(14) return to custody for specified hours following release for employment, schooling or other limited purposes; and

(g)(15) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of persons and property in the community.

(h) The court may at any time for good cause shown amend the order granting release to impose additional or different conditions of release.

